

**Filed 1/14/04 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2004 ND 3

State of North Dakota,

Plaintiff and Appellee

v.

Andrew Heckelsmiller,

Defendant and Appellant

No. 20030179

Appeal from the District Court of Burleigh County, South Central Judicial District, the Honorable Donald L. Jorgensen, Judge.

AFFIRMED.

Per Curiam.

Donavin L. Grenz, 101 North Broadway, P.O. Box 637, Linton, N.D. 58552-0637, for defendant and appellant.

Tyrone Jay Turner, Assistant State's Attorney, Burleigh County Courthouse, 514 East Thayer Avenue, Bismarck, N.D. 58501, for plaintiff and appellee.

State v. Heckelsmiller

No. 20030179

Per Curiam.

[¶1] Andrew Heckelsmiller appeals from a judgment convicting him of Criminal Trespass in violation of N.D.C.C. § 12.1-22-03. Heckelsmiller argues that he received ineffective assistance of counsel. In addition, Heckelsmiller argues the trial court abused its discretion when it excluded two of his witnesses who violated a sequestration order. He claims a trial court has an affirmative duty at least to inquire what testimony a witness heard before barring their testimony. After reviewing the entire record, we cannot conclude that assistance of counsel was plainly defective, and we affirm the judgment of conviction under N.D.R.App.P. 35.1(a)(4).

[¶2] We summarily affirm, however, without prejudice to Heckelsmiller's right to raise the issue of ineffective assistance of counsel in post-conviction proceedings. See State v. Palmer, 2002 ND 5, ¶ 13, 638 N.W.2d 18.

[¶3] Gerald W. VandeWalle, C.J.
Mary Muehlen Maring
William A. Neumann
Dale V. Sandstrom
Carol Ronning Kapsner